

EXHIBIT M

From: [Jon Kelley](#)
To: [John Ryan](#); [Jeremy Fielding](#)
Cc: [Clint Cowan](#); [Daniel DeCicco](#); [Nathan Wilcox](#); [Karyn Cooper](#)
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference
Date: Friday, August 16, 2019 5:38:08 PM

John,

The date required by the Rules for the filing of our 26(f) Report is actually August 19 – I had mistakenly listed it as August 29 in my email below.

Regardless, I understand that you are away on vacation and will address the issue after you return on August 29. We will represent the same to the Court when we file the report on the 19th.

Thank you,
Jon

JON KELLEY, Attorney
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Dallas, Texas 75201
[lynnllp.com](#)^[1]_{SEP}

Direct 214 981 3823
jkelley@lynnllp.com

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From: John Ryan <JRyan@RBDLLP.net>
Sent: Thursday, August 15, 2019 7:08 AM
To: Jon Kelley <jkelley@lynnllp.com>; Jeremy Fielding <jfielding@lynnllp.com>
Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Karyn Cooper <kcooper@lynnllp.com>
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

Because I am away on vacation and will address it on my return. Be so kind and add that.

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(516) 328-1100
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E-MAIL: jryan@rbdllp.net

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delete the message from your email system. Unauthorized use, dissemination, distribution or reproduction of this message by anyone other than the intended recipient is strictly prohibited and may be unlawful.

From: Jon Kelley <jkelley@lynnllp.com>
Sent: Wednesday, August 14, 2019 5:47 PM
To: John Ryan <JRyan@RBDLLP.net>; Jeremy Fielding <jfielding@lynnllp.com>
Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Karyn Cooper <kcooper@lynnllp.com>
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

John,

The federal rules require this report to be filed on August 29th, and we intend to comply with those rules.

To the extent the Village requires an extension of this deadline we encourage you to seek such an extension. Otherwise, we intend to file the Rule 26 report by the deadline, and will note in the report that we engaged you on the issue and you were unable to address the matter prior to the deadline.

Thanks,
Jon

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From: John Ryan <JRyan@RBDLLP.net>
Sent: Wednesday, August 14, 2019 11:51 AM
To: Jon Kelley <jkelley@lynnllp.com>; Jeremy Fielding <jfielding@lynnllp.com>
Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Karyn Cooper <kcooper@lynnllp.com>
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

I am away on vacation until 8/29. I will not be able to address this matter until after 8/29.

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From: Jon Kelley <jkelly@lynnllp.com>
Sent: Wednesday, August 14, 2019 12:03 PM
To: John Ryan <JRyan@RBDLLP.net>; Jeremy Fielding <jfielding@lynnllp.com>
Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Karyn Cooper <kcooper@lynnllp.com>
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

John,

I want to be sure I understand your position. Are you representing that the Village will not provide its position in the Rule 26(f) report prior to the deadline to file that document? Assuming the answer is yes, are you further suggesting that Aptive should request an extension based on the Village's refusal to provide a position in the report prior to the deadline?

Thanks,
Jon

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From: John Ryan <JRyan@RBDLLP.net>
Sent: Wednesday, August 14, 2019 10:42 AM
To: Jon Kelley <jkelly@lynnllp.com>; Jeremy Fielding <jfielding@lynnllp.com>
Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Karyn Cooper <kcooper@lynnllp.com>
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

If you are really that concerned about such a deadline, you should request an extension. My view is

that you should not even be doing this filing as the Code will be amended.

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From: Jon Kelley <jkelly@lynnllp.com>
Sent: Wednesday, August 14, 2019 11:24 AM
To: John Ryan <JRyan@RBDLLP.net>; Jeremy Fielding <jfielding@lynnllp.com>
Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Karyn Cooper <kcooper@lynnllp.com>
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

John,

Thanks for the heads-up with respect to your upcoming vacation. By our calculation, the deadline to file our 26(f) report under the federal rules is August 29. We appreciate receiving Defendant's input by that date so we can be sure to file the report in a timely manner.

Thanks,
Jon

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From: John Ryan <JRyan@RBDLLP.net>
Sent: Wednesday, August 14, 2019 8:12 AM
To: Jon Kelley <jkelly@lynnllp.com>; Jeremy Fielding <jfielding@lynnllp.com>
Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox

<n.wilcox@goaptive.com>

Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

I am leaving on a vacation this week., returning 8/29. The local law amending the Village Code is scheduled for public hearing/adoption on 9/9/19.

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From: Jon Kelley <jkelley@lynnllp.com>

Sent: Tuesday, August 13, 2019 6:31 PM

To: John Ryan <JRyan@RBDLLP.net>; Jeremy Fielding <jfielding@lynnllp.com>

Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>

Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

John,

I have attached a draft Rule 26(f) report based on our August 5 conference.

Please include Defendant's position on each issue and return a copy so we can get this on file with the Court.

If there are any other issues to discuss, we remain happy to do so at your convenience.

Thanks,
Jon

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From: John Ryan <JRyan@RBDLLP.net>

Sent: Wednesday, July 31, 2019 8:17 AM

To: Jeremy Fielding <jfielding@lynnllp.com>; Jon Kelley <jkelley@lynnllp.com>

Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>

Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

I think you have said it all.

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From: Jeremy Fielding <jfielding@lynnllp.com>

Sent: Tuesday, July 30, 2019 4:56 PM

To: John Ryan <JRyan@RBDLLP.net>; Jon Kelley <jkelley@lynnllp.com>

Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>

Subject: Re: Aptive v. East Rockaway; Rule 26(f) Conference

Because at present, we have live claims against you for having a still-on-the-books unconstitutional solicitation ordinance. Those are live claims for which a trial-on-the-merits will eventually occur, absent repeal of the ordinance.

If and when that ordinance is repealed (assuming the replacement ordinance is constitutional), it will resolve that portion of the case. At that point, the only remaining, unresolved portion of the case will be the amount of fees Aptive is due as the prevailing party under Section 1983. And that will be the proper time to submit our fee motion to the court (the case law – which, again, we are happy to share with you – clearly provides that a governmental body cannot avoid the attorneys' fees provision of Section 1983 simply by repealing the ordinance after losing a preliminary injunction hearing).

Happy to discuss further with you at your convenience.

Jeremy

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From: John Ryan <JRyan@RBDLLP.net>
Date: Tuesday, July 30, 2019 at 3:24 PM
To: Jeremy Fielding <jfielding@lynnllp.com>, Jon Kelley <jkelley@lynnllp.com>
Cc: Clint Cowan <Ccowan@lynnllp.com>, Daniel DeCicco <ddecicco@deyblp.com>, Nathan Wilcox <n.wilcox@goaptive.com>
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

Based upon your analysis, maybe you should make your application to the Court as you have already won. Why wait?

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From: Jeremy Fielding <jfielding@lynnllp.com>

Sent: Tuesday, July 30, 2019 3:54 PM

To: John Ryan <JRyan@RBDLLP.net>; Jon Kelley <jkelley@lynnllp.com>

Cc: Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>

Subject: Re: Aptive v. East Rockaway; Rule 26(f) Conference

John:

If East Rockaway's position is that it will not pay any of Aptive's attorneys fees, we definitely can't agree to a dismissal of our claims. Section 1983 requires the exact opposite. Aptive is plainly the prevailing party under both the TRO and the preliminary injunction. The case law applying Section 1983 in similar circumstances – which we are happy to share with you – clearly provides that a party winning a preliminary injunction is a “prevailing party” under the statute and is entitled to an award of its reasonable and necessary attorneys’ fees *as a matter of law*. We'll just have to brief the issue of fees to the court. Understand, of course, that we'll also request the additional fees incurred in briefing the fee issue – an amount to which the case law says we are also entitled. Settling now provides your client with an opportunity to resolve this matter without incurring an even greater amount of liability. In light of this, we urge your client to reconsider its present position. Further resistance will only lead to more fees they will be required to pay.

As you know, we tried desperately tried to avoid the present situation – as the email trail attached as an exhibit to our preliminary injunction attests. Indeed, your client's decision to choose to litigate these claims instead of opting for “collaboration and settlement” was something specifically noted in the Court's opinion. Litigating this case was certainly the Village's choice to make. But I find it implausible that the Court would – in the face of that deliberate choice – require Aptive to bear its own fees, particularly where the statute specifically entitled us to recover them.

Do not hesitate to contact me to discuss further if you wish.

Respectfully,

Jeremy

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From: John Ryan <JRyan@RBDLLP.net>

Date: Tuesday, July 30, 2019 at 2:06 PM

To: Jon Kelley <jkelley@lynnllp.com>

Cc: Jeremy Fielding <jfielding@lynnllp.com>, Clint Cowan <Ccowan@lynnllp.com>, Daniel DeCicco <ddecicco@deyblp.com>, Nathan Wilcox <n.wilcox@goaptive.com>

Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

East Rockaway will not pay your Attorney's fees. The \$200 fee represents administrative costs including background checks on individuals to be licensed. It is not "unconstitutional".

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From: Jon Kelley <jkelley@lynnllp.com>

Sent: Tuesday, July 30, 2019 2:54 PM

To: John Ryan <JRyan@RBDLLP.net>

Cc: Jeremy Fielding <jfielding@lynnllp.com>; Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>; Nathan Wilcox <n.wilcox@goaptive.com>

Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

John,

I sent you the settlement offer a week and a half ago on July 19, and I re-attached the settlement offer to the email I sent you less than an hour ago.

I am attaching the email, again, and copy below the text from the attached email.

* * *

“Aptive is willing to settle its case against East Rockaway if the Village 1) pays Aptive’s attorneys’ fees and costs, and 2) amends its ordinance to remove the unconstitutional elements.

As to the first item, **Aptive has incurred \$54,316.00 in attorneys’ fees and costs to date.**

As to the second, you indicate that East Rockaway is amending its ordinance in the same manner as Floral Park’s, but – as you know – we have significant concerns about the unconstitutional \$200 solicitation fee charged in Floral Park’s amended ordinance. Accordingly, Aptive will only agree to a processing fee that covers administrative costs for the processing of licenses, which is the constitutional standard articulated by the Supreme Court. *See Cox v. New Hampshire*, 312 U.S. 569, 577 (1941). Floral Park’s ordinance states that this processing fee is \$25, so we assume East Rockaway’s processing fee is the same or similar.

In any case, we still need to see a copy of the ordinance and confirm that the revisions are acceptable before we agree to settle. Please send a draft amendment at your earliest convenience.”

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From: John Ryan <JRyan@RBDLLP.net>
Sent: Tuesday, July 30, 2019 1:44 PM
To: Jon Kelley <jkelley@lynnllp.com>
Cc: Jeremy Fielding <jfielding@lynnllp.com>; Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deybllp.com>
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

8/5 at 3pm. As previously advised, Code revision will be same as Floral Park's. As I don't remember

any "settlement offer" being made, please re-send.

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From: Jon Kelley <jkelly@lynnllp.com>
Sent: Tuesday, July 30, 2019 2:00 PM
To: John Ryan <JRyan@RBDLLP.net>
Cc: Jeremy Fielding <jfielding@lynnllp.com>; Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>
Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

John,

I can do a call on August 5th at 3pm Eastern. Please let me know if that works for you and I can send a call in number.

As mentioned in my email of July 19 (attached), we appreciate that the Village is in the process of amending its code, but we have significant concerns about the content of that amended code. For that reason, a very simple way to handle this is to send us a draft of the proposed amendment so we can determine whether the amendments resolve our constitutional concerns.

Relatedly, does the Village have a response to the settlement offer included in my July 19 email?

Thanks,
Jon

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From: John Ryan <JRyan@RBDLLP.net>

Sent: Tuesday, July 30, 2019 11:22 AM

To: Jon Kelley <jkelly@lynnllp.com>

Cc: Jeremy Fielding <jfielding@lynnllp.com>; Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>

Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

That is week of August 5

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From: John Ryan

Sent: Tuesday, July 30, 2019 12:20 PM

To: Jon Kelley <jkelly@lynnllp.com>

Cc: Jeremy Fielding <jfielding@lynnllp.com>; Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>

Subject: RE: Aptive v. East Rockaway; Rule 26(f) Conference

I will be away. I can do call week of August 1 in the afternoon. I would suggest that you e-mail me your proposed dates. When doing so, please keep in mind that the Village Code is being amended.

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From: Jon Kelley <jkelley@lynnllp.com>

Sent: Tuesday, July 30, 2019 10:29 AM

To: John Ryan <JRyan@RBDLLP.net>

Cc: Jeremy Fielding <jfielding@lynnllp.com>; Clint Cowan <Ccowan@lynnllp.com>; Daniel DeCicco <ddecicco@deyblp.com>

Subject: Aptive v. East Rockaway; Rule 26(f) Conference

John,

As you know, the Court requires us to confer regarding the matters set out in Federal Rule 26(f) and to submit a discovery plan in the East Rockaway case. We are available for a telephonic 26(f) conference this Friday, August 2nd, next Monday, August 5, and next Tuesday, August 6.

Please let us know which of these dates works best for your schedule, and we will circulate a dial-in number for the call.

Thank you,
Jon

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